

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

Review of Quiet Zones Application)
Procedures)

WT Docket No. 01-319 / EIVED

NOTICE OF PROPOSED RULEMAKING

Adopted: November 9, 2001

Released: November 21, 2001

Comment Date: January 22, 2002

Reply Comment Date: February 6, 2002

By the Commission:

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking, we seek comment on any changes that could be made to our rules to streamline the processing of applications potentially affecting areas known as "Quiet Zones,"¹ while continuing to ensure that such Quiet Zones are fully protected from interference. We initiate this proceeding in accordance with the finding in the 2000 Biennial Review Report,² wherein the Commission accepted the staff recommendation to "review the application procedures for Quiet Zones to determine whether they can be made more efficient."³ In this proceeding, we request commenters to provide us with specific proposals for revising and streamlining the current requirements for applications affecting Quiet Zones.

II. BACKGROUND

2. Section 1.924 of our rules⁴ sets forth procedures regarding coordination of Wireless Telecommunications Services applications and operations within areas known as "Quiet Zones." The rule defines Quiet Zones as "those areas where it is necessary to restrict radiation so as to minimize possible impact on the operations of radio astronomy or other facilities that are highly sensitive to interference."⁵ The specific facilities addressed in this Notice fall into four categories: (1) the National Radio Astronomy Observatory site in Green Bank, Pocahontas County, West Virginia, and the Naval Radio Research Observatory site in Sugar Grove, Pendleton County, West Virginia;⁶ (2) the Table Mountain Radio Receiving Zone of the Research Laboratories of the Department of Commerce in Boulder County,

¹ See 47 C.F.R. § 1.924.

² In the Matter of The 2000 Biennial Regulatory Review, *Report*, 16 FCC Rcd 1207, 1231-1232 (2001) ("2000 Biennial Review Report").

³ *Id.*, citing Federal Communications Commission Biennial Regulatory Review 2000, CC Dkt. No. 00-175, Updated Staff Report (rel. Jan. 17, 2001) ("Updated Staff Report"), Appendix IV: Rule Part Analysis at 9.

⁴ 47 C.F.R. § 1.924.

⁵ *Id.*

⁶ *Id.*, § 1.924(a).

Colorado;⁷ (3) FCC field offices used for monitoring activities, which are located in Allegan, Michigan; Anchorage, Alaska; Belfast, Maine; Canandaigua, New York; Douglas, Arizona; Ferndale, Washington; Grand Island, Nebraska; Kingsville, Texas; Laurel, Maryland; Livermore, California; Powder Springs, Georgia; Santa Isabel, Puerto Rico; Vero Beach, Florida; and Waipahu, Hawaii;⁸ and (4) the Arecibo Observatory in Puerto Rico.⁹

3. For each of these four Quiet Zone categories, section 1.924 sets forth required or recommended procedures for notifications to and/or coordination of proposed frequency use with the affected site. In some cases, section 1.924 specifies a time frame for the notice and for the filing of objections with the Commission. In some cases, the rule recommends advance consultation with the affected site;¹⁰ in other cases, notification to the affected facility is expected to take place concurrently with the filing of the FCC application.¹¹

III. DISCUSSION

4. In September 2000, the Commission released an initial staff report concerning the 2000 biennial review of regulations required by the Telecommunications Act of 1996.¹² We requested comment on the Initial Staff Report,¹³ and received 18 comments and four reply comments. Alloy LLC, now Cingular Wireless LLP, filed comments requesting reevaluation of the Quiet Zone rules.¹⁴ Specifically, Alloy stated:

The current FCC Quiet Zone rules, 47 C.F.R. §§ 1.924(d), 101.31(b)(v), add an excessive interval to the process of obtaining approval for wireless facilities within the vicinity of a FCC Quiet Zone. For example, the Puerto Rican properties held by Alloy subsidiaries fall completely within the quiet zone dictated by the Arecibo Observatory. Currently, the Observatory is often willing to provide written approval for wireless modifications, but the FCC's rules delay final approval. These rules are burdensome and can be improved to address speed of service issues that will be in the public interest.¹⁵

⁷ *Id.*, § 1.924(b).

⁸ *Id.*, §§ 0.121, 1.924(c).

⁹ *Id.*, § 1.924(d). We exclude section 1.924(e), 47 C.F.R. § 1.924(e), concerning Government Satellite Earth Stations located in the Denver, Colorado and Washington, D.C. areas, from consideration in this proceeding, given the nature of the protected operations. This Notice of Proposed Rulemaking likewise does not propose any changes to section 1.924(f), 47 C.F.R. § 1.924(f), which limits operations in the 420-450 MHz band near certain military bases.

¹⁰ *See id.*, § 1.924(b)(2), (c)(4).

¹¹ *See id.*, § 1.924(a)(2), (d)(2).

¹² Federal Communications Commission Biennial Regulatory Review 2000, CC Dkt. No. 00-175, Staff Report (rel. Sept. 19, 2000) ("Initial Staff Report").

¹³ "Biennial Review 2000 Staff Report Released," *FCC Public Notice*, FCC 00-346 (rel. Sept. 19, 2000).

¹⁴ Biennial Review 2000 Comments of Alloy LLC, FCC 00-346, at 8 (filed Oct. 10, 2000).

¹⁵ *Id.*

In the Updated Staff Report, staff indicated that, in response to Alloy's comments, it would review the application procedures involving Quiet Zones to determine whether they could be made more efficient.¹⁶ The Commission in turn accepted this recommendation to review the Quiet Zones application procedures, and accordingly we issue this Notice of Proposed Rulemaking.

5. We consider protection of the Quiet Zone areas from radiofrequency interference to be critically important, as reflected in our existing rules and policies. It is our understanding that the current coordination procedures generally are successful in achieving this goal. We emphasize that, in instituting this Notice of Proposed Rulemaking, we are not proposing to reduce or eliminate carrier requirements to coordinate with Quiet Zones. Rather, we are looking for ways to streamline our application processes so long as the underlying objectives of the Quiet Zone rules are not compromised.

6. In that vein, we ask interested parties to address whether there are any ways to improve the current procedures prescribed by section 1.924, from either the perspective of a licensee or the perspective of a Quiet Zone entity. We further request interested parties, including the affected entities in Quiet Zones, to suggest any changes that would streamline the applicable processes while continuing to ensure that the Quiet Zone areas are fully and adequately protected.¹⁷ Finally, we ask commenters to address the impact of our current procedures as well as any streamlining proposals on our goals of maintaining full protection for Quiet Zones and facilitating timely wireless carrier provision of service to the public in a marketplace environment.

7. Alloy's biennial review comments addressed only the requirements imposed by section 1.924(d) regarding coordination with the Arecibo Observatory located in Puerto Rico and the limitation imposed by section 101.31(b)(v).¹⁸ Section 1.924(d)(2) requires that, for services with site-by-site station licenses (e.g., Part 101 point-to-point microwave and some cellular facilities), notification be provided to the Arecibo Observatory at the same time the FCC application is filed, which in turn must be at least 20 days before the applicant plans to begin operation. For services where individual station licenses are not issued (e.g., PCS), the notification must be sent at least 45 days in advance of the applicant's planned operation. For this latter category of services, the Arecibo Observatory must notify the Commission within 20 days of receipt of the notification if it intends to file comments or objections regarding the notification. The Observatory may submit comments or objections to the Commission either 20 days

¹⁶ Updated Staff Report, App. IV at 9.

¹⁷ We also will reinstate a limitation on the Arecibo Observatory coordination obligations that was inadvertently omitted when the Commission consolidated the Part 1 wireless rules in the ULS proceeding. Specifically, in the Report and Order, we will add a new section 1.924(d)(4) that states: "The provisions of this paragraph do not apply to operations that transmit on frequencies above 15 GHz." Similarly, the version of section 1.924(e) contained in the current volume of the Code of Federal Regulations includes two typographical errors from the rule adopted in 1997, and we contemplate correcting these errors in our Report and Order in this proceeding. Specifically, in section 1.924(e)(1), the first set of coordinates listed under Denver, CO Area, Rectangle 1 should be 41°30'00" North Latitude instead of 1°31'00" North. In section 1.924(e)(2), the longitude coordinates should be changed to 76°52'00" instead of 78°52'00". Finally, we plan to change the Quiet Zones reference in sections 27.601(c)(iii) and 90.159(b)(5) from section 90.177 to section 1.924, to reflect the consolidation of wireless rules we adopted in the ULS proceeding. See Amendment of Parts 0, 1, 12, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules To Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, 13 FCC Rcd 21027 (1998), *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11476 (1999).

¹⁸ Section 101.31(b) permits applicants for certain new or modified point-to-point microwave stations to operate on a conditional basis during the pendency of an associated application if certain conditions are met. 47 C.F.R. § 101.31(b). Subsection (v) of that section forbids conditional operation of facilities located in the Quiet Zones defined by section 1.924. 47 C.F.R. § 101.31(b)(v).

from the date an FCC application is filed, or 20 days from the date it advises the Commission that it is planning to file with respect to a notification. Alloy contended that the rules regarding coordination with the Arecibo Observatory are burdensome and could be improved to address speed of service issues, but made no specific recommendations regarding how we might accomplish that objective.¹⁹

8. While Alloy commented only on the procedures relating to Puerto Rico, we request comment concerning subparts (a) through (d) of section 1.924 and the procedures defined in those subparts for coordinating with and notifying all affected Quiet Zone entities defined by those rule subparts. First, we seek comment on whether to allow Part 101 applicants to initiate conditional operation under section 101.31(b), notwithstanding the limitation contained in subsection (v), if they submit to the Commission written consent from the affected Quiet Zone entity and otherwise are eligible to initiate conditional operations over the proposed facility.

9. Second, we seek comment on whether to expedite application processing where there are Quiet Zone implications if the applicant provides written consent from the relevant Quiet Zone entity. For example, section 1.924(a)(2) specifies that the FCC will allow a period of 20 days for comments or objections in response to a notification regarding proposed operation that might affect the National Radio Astronomy Observatory (NRAO) or the Naval Radio Research Observatory (NRRO). If a wireless operator filing a required application or other submission with this Commission obtains written consent as necessary from the NRAO and/or the NRRO following consultation, we could resume processing the application without awaiting the conclusion of the 20-day period.

10. Third, we seek comment on whether to allow parties to provide notification to and begin coordination with Quiet Zone entities (where required) in advance of filing an application with the Commission. For example, section 1.924(a)(2) requires the notification to the NRAO and NRRO to be sent at the same time a filing is made with the Commission. We believe it would help to expedite processing and the initiation of operations, while fully protecting the Quiet Zones, to allow the notification to the affected entity to occur in advance of the FCC filing. We thus request comment on an appropriate period of time to prescribe for such advance notification and coordination.

11. In addition, a number of our rule sections cross-reference section 1.924 or specify procedures that are contingent upon section 1.924. For example, sections 90.655,²⁰ 95.45(b),²¹ 101.1009,²² and 101.1329²³ indicate that particular sites may require individual station licenses or be subject to other restrictions if they are to be located in Quiet Zones as defined in section 1.924. We seek comment on any possible modifications of these and any other rules that implement the Commission's goals regarding protection of Quiet Zones from unwarranted and unacceptable interference.

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

12. As required by the Regulatory Flexibility Act,²⁴ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals in this

¹⁹ Biennial Review 2000 Comments of Alloy LLC, FCC 00-346, at 8 (filed Oct. 10, 2000).

²⁰ 47 C.F.R. § 90.655.

²¹ *Id.*, § 95.45(b).

²² *Id.*, § 1009.

²³ *Id.*, § 1329.

²⁴ 5 U.S.C. § 603.

Notice of Proposed Rulemaking. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the NPRM, and they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.²⁵

B. *Ex Parte* Rules

13. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules.²⁶

C. Filing Procedures

14. Pursuant to sections 1.415 and 1.419 of the Commission's rules,²⁷ interested parties may file comments on or before January 22, 2002 and reply comments on or before February 6, 2002. Comments and reply comments should be filed in WT Docket No. 01-319. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.²⁸

15. Comments filed through ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply. Or you may obtain a copy of the ASCII Electronic Transmittal Form (FORM-ET) at <http://www.fcc.gov/efile/email.html>.

16. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th St., S.W., Room. TW-A325, Washington, D.C. 20554, with a copy to Katherine M. Harris, Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th St., S.W., Rm. 4-C236, Washington, D.C. 20554. One copy of all comments should also be sent to the Commission's duplicating contractor, Qualex International, Portals II, 445 12th St., S.W., Room CY-B402, Washington, D.C. 20554.

17. Copies of all filings will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Room CY-A257, at Portals II, 445 12th St., S.W., Washington, D.C. 20554, and will be placed on the Commission's Internet site. Copies of comments and reply comments will be available through the Commission's duplicating contractor, Qualex International, Portals II, 445 12th St., S.W., Room CY-B402, Washington, D.C. 20554, telephone 202-863-2893, facsimile 202-863-2898, or e-mail, qualexint@aol.com.

²⁵ 5 U.S.C. § 603(a).

²⁶ See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

²⁷ 47 C.F.R. §§ 1.415, 1.419.

²⁸ See Electronic Filing of Documents in Rulemaking Proceedings, 13 FCC Rcd 11322, 11326 (1998).

D. Further Information

18. For further information, contact Katherine M. Harris, Wireless Telecommunications Bureau, Commercial Wireless Division, at (202) 418-0609.

V. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED, pursuant to the authority of sections 1, 4(i), 11, 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 161, 303(g), and 303(r), that this Notice of Proposed Rulemaking is ADOPTED.

20. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of the Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A

INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),²⁹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice of Proposed Rulemaking* provided above in paragraph 14. The Commission will send a copy of the *Notice of Proposed Rulemaking*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).³⁰ In addition, the *Notice of Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the Federal Register.³¹

A. Need for, and Objectives of, the Proposed Rules

2. As part of our biennial regulatory review, pursuant to section 11 of the Communications Act,³² we solicit comment on procedures for streamlining the Commission's rules for the processing of applications potentially affecting areas known as Quiet Zones, currently set forth in section 1.924 of our rules. Quiet Zones are defined as those areas where it is necessary to restrict radiation so as to minimize possible impact on the operations of radio astronomy or other facilities that are highly sensitive to interference. The Commission's rules currently set forth required or recommended procedures for notifications to and/or coordination of proposed frequency use within the affected Quiet Zones sites. In addition to section 1.924, a number of other Commission rules reference section 1.924 or specify procedures contingent upon section 1.924. In seeking comments on these rules, we are responding to concerns that these rules may be burdensome and unnecessarily delay the provision of service to the public.³³ Our purpose is to determine whether the required procedures can be streamlined to reduce the effect on wireless licensees while adequately protecting the operations of Quiet Zones.

B. Legal Basis

3. The potential actions on which comment is sought would be authorized under sections 1, 4(i), 11, 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 161, 303(g), and 303(r).

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.³⁴ The RFA defines

²⁹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

³⁰ See 5 U.S.C. § 603(a).

³¹ See 5 U.S.C. § 603(a).

³² 47 U.S.C. § 161.

³³ See *Notice of Proposed Rulemaking, supra*, ¶¶ 4-11.

³⁴ 5 U.S.C. § 603(b)(3).

the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."³⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act.³⁶ A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.³⁷ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."³⁸ Nationwide, as of 1992, there were approximately 275,801 small organizations.³⁹ "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."⁴⁰ As of 1992, there were approximately 85,006 such jurisdictions in the United States.⁴¹ This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.⁴² The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,6000 (96 percent) are small entities.

5. In the following paragraphs, we further describe and estimate the number of small entity licensees that may be affected by any streamlining changes in the proposed rules, if adopted. Since this rulemaking proceeding applies to multiple services, we will analyze the number of small entities affected on a service-by-service basis. The number of small entities identified below substantially overestimates the number of small entities that might be affected by any rule change in this docket, since only entities proposing or planning facilities in proximity to any of the Quiet Zones would be affected by any changes in the requirements.

6. **Cellular Licensees.** Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.⁴³ According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms that operated during 1992 had 1,000 or more employees.⁴⁴ Even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we

³⁵ 5 U.S.C. § 601(6).

³⁶ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities for the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

³⁷ 15 U.S.C. § 632.

³⁸ 5 U.S.C. § 601(4).

³⁹ 1992 Economic Census, U.S. Bureau of Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

⁴⁰ 5 U.S.C. § 601(5).

⁴¹ U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

⁴² *Id.*

⁴³ 13 C.F.R. § 121.201, NAICS code 513322.

⁴⁴ U.S. Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5 (1995) (1992 Census, Series UC92-S-1), NAICS code 513322.

note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. According to the most recent *Telecommunications Industry Revenue* data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service, which are placed together in the data.⁴⁵ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. We estimate that there are no more than 808 small cellular service carriers that may be affected by any proposed rules that may be adopted.

7. **220 MHz Radio Service -- Phase I Licensees.** The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to radiotelephone communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.⁴⁶ According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees.⁴⁷ Therefore, if this general ratio continues, in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

8. **220 MHz Radio Service -- Phase II Licensees.** The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁴⁸ We have defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.⁴⁹ A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.⁵⁰ The SBA has approved these definitions.⁵¹ Two auctions of Phase II licenses have been conducted. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won one of the nationwide licenses, 67 percent of the regional licenses, and 54 percent of the EA licenses. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

⁴⁵ See *Telecommunications Industry Revenues: 1999*, Industry Analysis Division, Common Carrier Bureau (Sept. 2000).

⁴⁶ 13 C.F.R. § 121.201, NAICS code 513322.

⁴⁷ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

⁴⁸ Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order; Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 10943, 11068-70 (1997) (220 MHz Third Report and Order); see also 47 C.F.R. § 90.1017.

⁴⁹ 220 MHz Third Report and Order, 12 FCC Rcd at 11068-70; see also 47 C.F.R. § 90.1017.

⁵⁰ 220 MHz Third Report and Order, 12 FCC Rcd at 11068-69; see also 47 C.F.R. § 90.1017.

⁵¹ See Letter to Daniel B. Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration (Jan. 6, 1998).

9. **700 MHz Guard Band Licenses.** In the *700 MHz Guard Band Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁵² We have defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.⁵³ A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.⁵⁴ An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned at that time, 96 licenses were sold to 9 bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction began on February 13, 2001, and ended on February 21, 2001. A total of eight licenses were sold to three bidders. One of these bidders was a small business that won a total of two of these licenses.

10. **Paging.** In the *Paging Second Report and Order and Further Notice of Proposed Rulemaking*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁵⁵ We have defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$15 million. A "very small business" is defined as an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$3 million. The SBA has approved these definitions.⁵⁶ An auction of MEA licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won licenses. In addition, at present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.⁵⁷ We are unable at this time to estimate with precision the number of paging carriers that would qualify as small business concerns, particularly among the pre-existing licensees. Consequently, we estimate that there are fewer than, but up to, 172 small paging carriers that may be affected by the proposed rules, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

⁵² See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299, 5344 (2000) (700 MHz Guard Band Second Report and Order); see also 47 C.F.R. § 27.502(a). These definitions have been approved by the SBA. See Letter to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Gary M. Jackson, Assistant Administrator, Small Business Administration (Mar. 26, 2001).

⁵³ See *700 MHz Guard Band Second Report and Order*, 15 FCC Rcd at 5344; see also 47 C.F.R. § 27.502(a).

⁵⁴ See *700 MHz Guard Band Second Report and Order*, 15 FCC Rcd at 5344; see also 47 C.F.R. § 27.502(a).

⁵⁵ Revision of Part 22 and Part 90 of the Commission's Rules To Facilitate Future Development of Paging Systems, *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 2731, 2811-2812 (1997). These provisions were somewhat modified and clarified in Revision of Part 22 and Part 90 of the Commission's Rules To Facilitate Future Development of Paging Systems, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030, 10085-10088 (1999). See also 47 C.F.R. §§ 22.217, 22.223.

⁵⁶ See Letter to Amy J. Zoslov, Chief (Acting), Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, at 3-4 (Dec. 2, 1998).

⁵⁷ *Trends in Telephone Service*, Table 19.3 (Feb. 19, 1999).

11. **Broadband Personal Communications Service (PCS).** The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.⁵⁸ For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁵⁹ These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.⁶⁰ No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.⁶¹ On March 23, 1999, the Commission reaucted 347 C, D, E, and F block licenses; there were 48 small business winning bidders. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, plus the 48 winning bidders in the re-auction, for a total of 231 small entity PCS providers as defined by the SBA and the Commission's auction rules. On January 26, 2001, the Commission completed the auction of 422 C and F block broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as small or very small businesses.

12. **Narrowband PCS.** To date, three auctions of narrowband PCS licenses have been conducted. Through these auctions, the Commission has awarded a total of 41 licenses, 11 of which were obtained by small businesses. For purposes of the first two auctions that have already been held, small businesses were defined as entities with average gross revenues for the prior three calendar years of \$40 million or less.⁶² Four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the then existing rules. To ensure meaningful participation of small business entities in subsequent auctions, the Commission adopted a two-tiered definition of small businesses in the *Narrowband PCS Second Report and Order*.⁶³ A small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A very small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more

⁵⁸ See Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7850-7852 (1996); see also 47 CFR § 24.720(b).

⁵⁹ See Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd at 7852; see also 47 C.F.R. § 24.720(b).

⁶⁰ See Letter to Amy J. Zoslov, Chief (Acting), Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, at 3 (Dec. 2, 1998).

⁶¹ FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (rel. Jan. 14, 1997).

⁶² In the Matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding Narrowband PCS, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 196 (1994).

⁶³ In the Matter of Amendment of the Commission's Rules To Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 15 FCC Rcd 10456, 10476 (2000); see also 47 C.F.R. § 24.321(a).

than \$15 million. These definitions have been approved by the SBA.⁶⁴ The third auction closed on October 16, 2001, and involved eight nationwide and 357 Metropolitan Trading Area (MTA) licenses. Five bidders won 317 licenses (309 MTA licenses and the eight nationwide licenses). Three of the five winning bidders were small businesses. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. The Commission assumes, for purposes of this IRFA, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

13. **Rural Radiotelephone Service.** The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.⁶⁵ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).⁶⁶ We will use the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.⁶⁷ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

14. **Air-Ground Radiotelephone Service.** The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.⁶⁸ Accordingly, we will use the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.⁶⁹ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

15. **Specialized Mobile Radio (SMR).** The Commission has defined "small business" for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band, as a firm that has had average annual gross revenues of \$15 million or less in the three preceding calendar years.⁷⁰ The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions.⁷¹ Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small businesses under the \$15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz band qualified as small businesses under the \$15 million size standard. An auction of 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Of the 1,050 licenses offered in that auction, 1,030 licenses were sold. Eleven winning bidders for

⁶⁴ See Letter to Amy J. Zoslov, Chief (Acting), Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration (Dec. 2, 1998).

⁶⁵ The service is defined in section 22.99 of the Commission's rules, 47 C.F.R. § 22.99.

⁶⁶ BETRS is defined in sections 22.757 and 22.759 of the Commission's rules, 47 C.F.R. §§ 22.757, 22.759.

⁶⁷ 13 C.F.R. § 121.201, NAICS code 513321, 513322, and 51333.

⁶⁸ The service is defined in section 22.99 of the Commission's rules, 47 C.F.R. § 22.99.

⁶⁹ 13 C.F.R. § 121.201, NAICS code 513321, 513322, and 51333.

⁷⁰ 47 C.F.R. § 90.814(b)(1).

⁷¹ See Letter to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration (Aug. 10, 1999) (800 MHz SMR); Letter to Michele C. Farquhar, Acting Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Philip Lader, Administrator, Small Business Administration (July 24, 1996) (900 MHz SMR).

licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 EA licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed small business status. In addition, there are numerous incumbent site-by-site SMR licensees in the 800 and 900 MHz bands.

16. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for purposes of this IRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

17. **Private Land Mobile Radio (PLMR).** PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

18. The Commission is unable at this time to estimate the number of small businesses that could be impacted by the rules. However, the Commission's 1994 Annual Report on PLMR⁷² indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules in this context could potentially impact every small business in the United States.

19. **Amateur Radio Service.** All Amateur Radio Service licenses are presumed to be individuals. Accordingly, no small business definition applies for this service.

20. **Aviation and Marine Radio Service.** Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter. The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the SBA rules for radiotelephone (wireless) communications.⁷³

21. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of our evaluations and conclusions in this IRFA, we estimate that there may be at least 712,000 potential licensees that are individuals or small entities, as that term is defined by the SBA.

22. **Fixed Microwave Services.** Microwave services include common carrier,⁷⁴ private-operational fixed,⁷⁵ and broadcast auxiliary radio services.⁷⁶ At present, there are approximately

⁷² Federal Communications Commission, *60th Annual Report, Fiscal Year 1994*, at 116.

⁷³ 13 C.F.R. § 121.201, NAICS code 513321, 513322, and 51333.

⁷⁴ 47 C.F.R. Part 101.

⁷⁵ Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from (continued....)

22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone (wireless) companies -- *i.e.*, an entity with no more than 1,500 persons.⁷⁷ We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

23. **Public Safety Radio Services.** Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.⁷⁸ There are a total of approximately 127,540 licensees within these services. Governmental entities⁷⁹ as well as private businesses comprise the licensees for these services. As indicated *supra* in paragraph four of this IRFA, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.⁸⁰

24. **Personal Radio Services.** Personal radio services provide short-range, low-power radio for personal communications, radio signaling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).⁸¹ Inasmuch as the CB, GMRS, and

(...continued from previous page)

common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

⁷⁶ Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 C.F.R. § 74.501 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

⁷⁷ 13 C.F.R. § 121.201, NAICS code 513321, 513322, and 51333.

⁷⁸ With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 C.F.R. §§ 90.15-90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service is currently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service, which is comprised of licensees from state departments of conservation and private forest organizations that set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 C.F.R. §§ 90.15-90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 C.F.R. §§ 90.33-90.55.

⁷⁹ 47 C.F.R. § 1.1162.

⁸⁰ 5 U.S.C. § 601(5).

⁸¹ Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by Subpart D, Subpart A, Subpart C, and Subpart B, respectively, of part 95 of the Commission's rules. 47 C.F.R. §§ 95.401-95.428; §§ 95.1-95.181; §§ 95.201-95.225; §§ 95.191-95.194.

FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition.

25. **Offshore Radiotelephone Service.** This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.⁸² At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone (wireless) communications.

26. **Wireless Communications Services.** This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years.⁸³ The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

27. **Local Multipoint Distribution Service.** The Commission held two auctions for licenses in the Local Multipoint Distribution Services (LMDS) (Auction No. 17 and Auction No. 23). For both of these auctions, the Commission defined a "small business" as an entity, together with its affiliates and controlling principals, having average gross revenues for the three preceding years of not more than \$40 million.⁸⁴ A "very small business" was defined as an entity, together with affiliates and controlling principals, having average gross revenues for the three preceding years of not more than \$15 million.⁸⁵ Of the 144 winning bidders in Auction Nos. 17 and 23, 125 bidders (87 percent) were small or very small businesses.

28. **24 GHz—Incumbent 24 GHz Licensees.** The rules that we may later adopt could affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The Commission did not develop a definition of small entities applicable to existing licensees in the 24 GHz band. Therefore, the applicable definition of small entity is the definition under the SBA rules for the radiotelephone industry, providing that a small entity is a radiotelephone company employing fewer than 1,500 persons.⁸⁶ The 1992 Census of Transportation, Communications and Utilities, conducted by the Bureau of the Census, which is the most recent

⁸² This service is governed by Subpart I of Part 22 of the Commission's Rules. See 47 C.F.R. §§ 22.1001-22.1037.

⁸³ In the Matter of Amendment of the Commission's Rules To Establish Part 27, The Wireless Communications Service ("WCS"), *Report and Order*, 12 FCC Rcd 10785, 10879 (1997).

⁸⁴ In the Matter of Rulemaking To Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 Frequency Band, To Reallocate the 29.5-30.0 Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 12545, 12690 (1997); see also 47 C.F.R. § 101.1112(c).

⁸⁵ In the Matter of Rulemaking To Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 Frequency Band, To Reallocate the 29.5-30.0 Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Order on Reconsideration*, 12 FCC Rcd 15082, 15094 (1997); see also 47 C.F.R. § 101.1112(b). The definitions have been approved by the SBA. See Letter to Daniel B. Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration (Jan. 6, 1998).

⁸⁶ See 13 C.F.R. § 121.201, NAICS code 513321, 513322, and 51333.

information available, shows that only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees.⁸⁷ This information notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent⁸⁸ and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

29. **Future 24 GHz Licensees.** With respect to new applicants in the 24 GHz band, we have defined “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million.⁸⁹ “Very small business” in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.⁹⁰ The SBA has approved these definitions.⁹¹ The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held. Even after that, the Commission will not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed.

30. **39 GHz.** The Commission held an auction (Auction No. 30) for fixed point-to-point microwave licenses in the 38.6 to 40.0 GHz band (39 GHz Band).⁹² For this auction, the Commission defined a “small business” as an entity, together with affiliates and controlling interests, having average gross revenues for the three preceding years of not more than \$40 million.⁹³ A “very small business” was defined as an entity, together with affiliates and controlling principals, having average gross revenues for the three preceding years of not more than \$15 million.⁹⁴ The SBA has approved these definitions.⁹⁵ Of the 29 winning bidders in Auction No. 30, 18 bidders (62 percent) were small business participants.

31. **218-219 MHz Service.** The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 595 Metropolitan Statistical Area (MSA) licenses. Of the 595 licenses, 557

⁸⁷ 1992 Census, Series UC-92-S-1 at Firm Size 1-123.

⁸⁸ Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

⁸⁹ In the Matter of Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules To License Fixed Services at 24 GHz, *Report and Order*, 15 FCC Rcd 16934, 16967 (2000); *see also* 47 C.F.R. § 101.538(a)(2).

⁹⁰ In the Matter of Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules To License Fixed Services at 24 GHz, *Report and Order*, 15 FCC Rcd at 16967; *see also* 47 C.F.R. § 101.538(a)(1).

⁹¹ *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Gary M. Jackson, Assistant Administrator, Small Business Administration (July 28, 2000).

⁹² *See* 39 GHz Band Auction Closes; Winning Bidders of 2,173 Licenses Announced, *Public Notice*, DA 00-1035 (May 10, 2000).

⁹³ In the Matter of Amendment of the Commission’s Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, *Report and Order and Second Notice of Proposed Rulemaking*, 12 FCC Rcd 18600, 18662 (1997); *see also* 47 C.F.R. § 101.1209(b)(1)(i).

⁹⁴ In the Matter of Amendment of the Commission’s Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, *Report and Order and Second Notice of Proposed Rulemaking*, 12 FCC Rcd at 18662; *see also* 47 C.F.R. § 101.1209(b)(1)(ii).

⁹⁵ *See* Letter to Kathleen O’Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration (Feb. 4, 1998).

were won by entities qualifying as a small business. For that auction, we defined a “small business” as an entity that, together with its affiliates, has no more than a \$6 million net worth, and after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.⁹⁶ In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we defined a “small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years.⁹⁷ A “very small business” is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.⁹⁸ These definitions have been approved by the SBA.⁹⁹ We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218-219 MHz spectrum. Given the success of small businesses in the previous auction, and the prevalence of small business in the subscription television services and message communications industries, we assume for purposes of this IRFA that in future auctions, all of the licenses may be awarded to small businesses.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

32. This NPRM neither proposes nor anticipates any additional reporting, recordkeeping, or other compliance measures.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

33. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of different compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rules for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

34. The purpose of this rulemaking is to seek comment on possible procedures for streamlining the regulatory obligations associated with wireless applications and facilities that may implicate the Commission’s defined Quiet Zones, while still adequately and fully protecting the various operations located in the Quiet Zones. One alternative considered, as suggested by a commenter,¹⁰⁰ is to remove rules and provisions that restrict or limit activities of all entities, including small businesses, in the Quiet Zones. During the course of our consideration of this alternative, we have carefully considered the overlying public policy and safety needs that necessitated maintaining the Quiet Zones provisions. Therefore, while we are not willing to discard all rules and provisions concerning Quiet Zones, we are

⁹⁶ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fourth Report and Order*, 9 FCC Rcd 2330, 2336 (1994).

⁹⁷ In the Matter of Amendment of Part 95 of the Commission’s Rules To Provide Regulatory Flexibility in the 218-219 MHz Service, *Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd 1497, 1559 (1999) (218-219 MHz Report and Order); see also 47 C.F.R. § 95.816(c)(1).

⁹⁸ *218-219 MHz Report and Order*, 15 FCC Rcd at 1559-1560; see also 47 C.F.R. § 95.816(c)(2).

⁹⁹ See Letter to Daniel B. Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration (Jan. 6, 1998).

¹⁰⁰ See *Notice of Proposed Rulemaking*, *supra*, ¶¶ 4-11.

willing to examine and give careful consideration to any proposals that would reduce or alleviate the burdens on small entities, as well as other affected parties.

35. More specifically, we are considering as an alternative resuming processing of an application with Quiet Zone implications if written consent from the affected Quiet Zone entity is provided.¹⁰¹ This alternative could greatly reduce the processing time for an application submitted by all entities, including small entities. Parties, including small entities, are encouraged to provide additional alternatives for consideration.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

36. None.

¹⁰¹ See *id.*, ¶ 9.